

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 315 of 1981

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

HAROON HAJI IBRAHIM

Versus

BHAVNAGAR NAGARPALIKA

Appearance:

MS DAXA R VYAS for Petitioner

MR JD AJMERA for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 10/10/2000

ORAL JUDGEMENT

This appeal arises of the judgment and order dated 22nd January, 1981, passed by the learned District Judge, Bhavnagar, in Regular Civil Appeal No. 40/79, arising of the judgment and decree dated 14th February, 1979, passed by the learned Civil Judge (SD) Bhavnagar,

in Regular Civil Suit No. 187/78. The appellant before this court is the plaintiff.

The plaintiff is a partnership firm running the business of timber in the town of Bhavnagar. The partners in the said firm are one Ahmad Haji Ibrahim and his son Abdul Rajak Ahmad. It is the claim of the plaintiff that the suit land was taken on rent by the ancestors of the partners in the plaintiff firm in the year 1880 from the then Ruler of Bhavnagar State for the purposes of timber business. The said land was sold by then Ruler Maharaja Takhatsinhji Jashvantsinhji to one Meman Adamji on 4th December, 1884. Since then on 4th August, 1897, the then President of Bhavnagar Municipality permitted Meman Haji Amad to place five doors and ten windows on the Southern side of the suit land. The partners of the firm inherited the said business of timber from their ancestors above referred Haji Amadji and Haji Ahmad. Thus, the plaintiff was the owner of the suit land and the construction thereon through the ancestors since 4th December, 1884, and no encroachment was made by the plaintiff on any land. Nonetheless, the respondent-Municipality, on 5th October, 1977, issued a notice under section 185 of the Gujarat Municipalities Act, 1963, calling upon the plaintiff to remove encroachment from the Municipal land. The said notice was duly answered on 2nd November, 1977. The defendant-Municipality, without considering the reply given by the plaintiff and documents evidencing the ownership and possession of the plaintiff for more than 100 years, removed the gate on the Eastern side of the suit land and took away some timber, bamboos etc. causing damage to the plaintiff to the tune of Rs. 5255/- and the land in occupation of the plaintiff is being used for the public passage. The plaintiff, therefore, prayed for an injunction restraining the defendant from executing the notice dated 5th October, 1977, and for injunction restraining the defendant from obstructing/disturbing the possession of the plaintiff of the suit land.

The suit was contested by the defendant-Municipality by filing its written statement at Ex. 15. The averments made in the plaint were denied. It was alleged that the plaintiff had encroached upon the Municipal land and had stored timber on the said land. It was alleged that 15 Ft. wide land on the East of the suit land was reserved for public road upon which the plaintiff had encroached. It was this land which was reserved for public road and was encroached upon by the plaintiff from which the encroachment was removed and the

land was kept open for the public use.

Both the courts, after considering the documentary and the oral evidence led by the plaintiff, held that the plaintiff had failed to prove its title. The plaintiff, therefore, was not competent to bring the suit. It has also been held that the plaintiff had encroached upon 15 Ft. wide land reserved for the public road. Both these findings being findings of fact, can not be interfered with by this court in this Second Appeal. The question whether the plaintiff can be evicted of the land under its continuous possession for a long time, does not arise. It was never the case of the plaintiff that the land in question was under its occupation for a long time and, therefore, the plaintiff can not be dispossessed in exercise of powers under section 185 of the Gujarat Municipalities Act, 1963. All along the plaintiff had claimed title to the said piece of land which it has failed to prove. In that view of the matter, the suit has rightly been dismissed.

In view of the above discussion, the appeal is dismissed with costs.

(MS R.M.DOSHIT J)

JOSHI